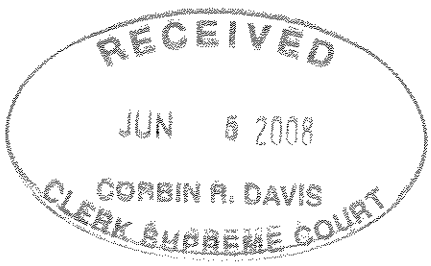
SUPREME COURT CLERK
P.O. Box 30052
Lansing, MI 48909




Re: ADM File No. 2006-16

Dear Clerk,

I am writing to express my objection to the proposed amendments to MCR 6.302 and 6.310 as set forth below.

Statistically, approximately 95% of all convictions are by guilty pleas. A large number of guilty pleas are tendered for a variety of reasons to wit: (1) lenient plea offers such as no jail or prison time, probation and restitution, (2) lack of understanding of rights and law, (3) attorneys' failure to fully explain those rights and law, (4) pressure from attorneys' or misleading advice, (5) threats and pressure from prosecutor to seek severe penalty or sentence.

In many instances judges' serve as a buffer between an unyielding prosecutor or failure of an indifferent public defender whose only goal is to push the case through with a plea as expeditiously as possible, regardless of what the penalty or sentence might be or the guilt or innocence of the client. This is especially true is a client has prior convictions and more so in cases of criminal sexual conduct that even public defenders' often allow to affect their judgment and loyalty to the client.

However, some judges' absolutely refuse to engage in Cobb type plea agreements such as the Honorable Harvey A. Koselka of the Lenawee County Circuit Court. Despite this lack of Cobb plea participation Judge Koselka typically is fair in imposing sentence within the guidelines based on the probation agent's recommendation. However, it is just the opposite with Judge Timothy Pickard of the same circuit court. While he does participate in Cobb pleas he often exceeds the sentencing guidelines where no Cobb's plea was set.

As clearly seen, it comes down to individual and independent judgment calls for judges. But by completely removing a judge's option in participating in Cobb pleas, the danger of prosecutorial overreaching or attorney neglect is increased and essentially leaves defendant's at the complete mercy of prosecutors' and public defenders' alike who frequently strike up off-the-record plea deals that are in many cases not in the best interest of the client or the interest of justice.

Therefore, I would stronly object to prohibiting judges' from participating in Cobb pleas or in the alternative, offer another solution that would serve to promote the administration of justice more effectively.

If the rule is amended to eliminate such plea participation then I would suggest it be replaced with a formidable rule of judicial oversight that would require an on-the-record summary inquiry with

both the prosecutor and attorney of some or all of the following: (a) whether the defendant is academically capable of reading, writing and understanding the charges against him in order to effectively assist counsel, nothwithstanding either language or pychological problems, (b) whether the defendant has been provided discovery material from counsel regardless of a request, (c) whether counsel has interviewed the defendant for a sufficient amount of time in a private place rather than between locked doors of holding cells/tanks, (d) whether counsel has filed any pretrial motions and what those motions are, (e) whether counsel has conducted any investigation or sought additional defense funding for an investigator or expert, if needed, (f) whether counsel has contacted and interviewed res gestae witnesses and subpoened them or insist those endorsed be made available in advance of trial, (g) her counsel has been offered or offered any plea deals and communicated those with the defendant regarding the charges or sentence, (h) whether counsel has fully discussed the facts and legal strategies with the defendant and fully informed the defendant of the advantages and disadvantages of pursuing a particular defense or plea, and (i) confirm all the above with the defendant on the record no later than the pretrial stages.

The above suggestion will improve both the quality of prosecution and defense efforts as it will hold those officers of the court more accountable while safeguarding a minimal due process in the process. As for the amending 6.310 to delete allowance of a defendant to withdraw from a Court agreement to a specific term that the court didn't honor is not in the interest of defendant, the juridiciary or the public. In fact, such a change would surely be so controversial that the court's would be flooded with appeals. It may also decrease pleas and increase the number of trials since there would be little trust in the judicial system when judges would be able to renege on a plea and the defendant would be stuck with the consequences.

I hope these suggestions help. Thank you.

Sincerely,

James L. Howard

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Dated: June 3, 2008

cc: File